

WEDNESDAY, OCTOBER 3, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m. with Chairman Parrish and Mr. Klehs present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

### **BUSINESS TAXES APPEALS HEARINGS**

Scenario Design, Inc., SR AA 99-730665; 78695

1-1-98 to 12-31-98, \$42,961.53 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner has shown that Walt Disney Imagineering paid the tax liability for the Disney contracts at issue in this audit.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang and Mr. Andahl absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Intellisec, SR S EA 99-848610; 62458

4-1-96 to 12-31-98, \$10,839.50 Tax

For Petitioner:

Hearing Request Withdrawn

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether unreported ex-tax purchases of materials and fixtures are overstated.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang and Mr. Andahl absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Michael J. Dietrick and Galen R. Hamilton, SP UT 82-655115; 89001139540

3-31-97, \$7,975.00 Tax

Michael J. Dietrick, MD, SR UT 82-656704; 89001141740

2-28-97, \$3,588.10 Tax, \$358.81 Penalty, Failure to File

For Petitioner:

Victor Charles Anvick

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

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Issues: Whether petitioners purchased the aircraft for use in California. (89001139540)  
Whether petitioner Michael J. Dietrick, MD purchased Galen R. Hamilton's 50 percent interest in the aircraft. (89001141740)

Whether relief from the 10 percent penalty for failure to file returns is warranted. (89001141740)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang and Mr. Andal absent, the Board ordered to delete the failure to file penalty and that the petition be submitted for decision.

Omnitrition International, Inc., SC OHC 30-698369; 89000882520

7-1-93 to 6-30-96, \$16,817,212.00 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Action: The Board took no action.

Car Club Inc., SR AS 99-261651; 89002172330

1-1-93 to 9-30-96, \$338,258.75 Tax, \$34,933.40 Penalty, Negligence

For Petitioner: Charles L. Nagel, Attorney

Tony Fatemi, President

Elias Aziz-Lavi, Accountant

For Sales and Use Tax Department: Robert Tucker, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence provided supports tax exemption for any of the claimed exempt sales of vehicles in interstate commerce.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Chiang and Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

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David Michaeli, SR AP 18-731067; 29058

4-1-95 to 3-31-98, \$5,525.91 Tax, \$00.00 Penalty

For Petitioner: David Michaeli

Rico Michaeli

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether charges for commingled reconditioned nozzles petitioner transferred are subject to tax.

Whether petitioner has shown that his excess bank deposits in the amount of \$14,970 are nontaxable receipts, which consisted of transfers of funds between bank accounts.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang and Mr. Andal absent, the Board ordered that the petition be submitted for decision, granting the Appeals Section 30 days to review additional documentation and bring the matter back to the Board for a final recommendation.

The Board recessed at 10:45 a.m. and reconvened at 11:05 a.m. with Mr. Parrish, Mr. Klehs and Ms. Mandel present.

Smith Bruni Design Consultants, Inc., SR AP 97-564936; 34324

7-1-91 to 3-31-99, \$72,159.09 Tax, \$7,216.05 Penalty, Failure to File

For Petitioner: No Appearance

For Sales and Use Tax Department: Warren L. Astleford, Counsel

Action: The Board took no action.

Robert R. Daigle, SR EH 23-842829; 89000424880

10-1-94 to 9-30-97, \$11,804.76 Tax, \$00.00 Penalty, Negligence

For Petitioner: No Appearance

Action: The Board took no action.

R.J.E. Trade International, Inc., SR EA 99-894227; 84138

1-15-96 to 6-30-99, \$31,077.42 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

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**FINAL ACTION ON PETITIONS HEARD OCTOBER 3, 2001**

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang and Mr. Andal absent, the Board ordered that the petition of *Michael J. Dietrick and Galen R. Hamilton, SP UT 82-655115; 89001139540 and Michael J. Dietrick, MD, SR UT 82-656704; 89001141740*, be redetermined with adjustments, deleting the penalty.

The Board recessed at 11:10 a.m. and reconvened at 1:35 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Ms. Mandel present.

**BUSINESS TAXES APPEALS HEARINGS**

Valentin Gomez Jimenez, SX AP 99-272364; 89002177520

7-1-95 to 6-30-98, \$52,916.13 Tax, \$5,476.16 Penalty, Negligence

For Petitioner:

Valentin Gomez Jimenez

Austen Pell, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues:

Whether the audited purchases are excessive.

Whether the evidence establishes that the markup is excessive.

Whether relief from the penalty for negligence is warranted.

Action:

Upon motion of Ms. Mandel, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

**CORPORATE FRANCHISE AND INCOME TAX APPEALS HEARINGS**

Kaufman & Broad Home Corporation, 37312

1989, \$ 772,368.00 Assessment

1990, \$ 1,200,694.00 Assessment

1991, \$ 393,770.00 Assessment

For Appellant:

David Colker, Attorney

Cory Cohen, Representative

For Franchise Tax Board:

Andrea Chang, Tax Counsel

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Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant's losses from its two investments in triple-net equipment lease packages were business losses (subject to formula apportionment) or nonbusiness losses (allocable).

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal be submitted for decision.

### **BUSINESS TAXES APPEALS HEARINGS**

Anthony Jude Glazier and Mark Benardo, SN AB 99-118226; 89002110560

7-1-92 to 9-3-93, \$21,275.54 Tax, \$5,318.93 Penalty, Fraud

Anthony Jude Glazier, SN AB 53-000048; 79222

9-4-93 to 12-31-95, \$23,645.68 Tax, \$00.00 Penalty, Fraud

For Petitioner: Anthony Jude Glazier

Phillip Schlosberg, Attorney

For Sales and Use Tax Department:

Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether audited taxable sales were established in accordance with the facts.

Whether petitioner Anthony Jude Glazier, a former partner, can be held responsible for liabilities incurred in periods after the partnership was dissolved.

Whether relief from the penalty for fraud is warranted.

Action: Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs voting yes, Ms. Mandel not participating, Mr. Andal absent, the Board ordered that the petition of *Anthony Jude Glazier and Mark Benardo, SN AB 99-118226; 89002110560* be redetermined with adjustments, deleting the negligence penalty.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs voting yes, Ms. Mandel not participating, Mr. Andal absent, the Board ordered the petition of *Anthony Jude Glazier, SN AB 53-000048; 79222* be redetermined with adjustment.

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Knowledge Adventure Inc., SR AP 17-811805; 89000223240

7-1-92 to 9-30-95, \$9,132.42 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Naranbhai Bapudas Patel, SR EHC 23-787024; 34351

7-1-95 to 9-30-98, \$26,914.71 Tax, \$2,691.49 Penalty, Negligence

Naranbhai B. Patel &amp; Ghanshyom K. Patel, SR EHC 23-835140; 34350

7-1-95 to 9-30-98, \$32,066.36 Tax, \$3,206.66 Penalty, Negligence

For Petitioner: Naranbhai Patel

Dylan Brennan, Accountant

Richard Ackerman, Attorney

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that the audited taxable purchase ratios are excessive.

Whether the evidence shows that the audited taxable markups are excessive.

Whether the evidence warrants a greater allowance for self-consumed taxable merchandise.

Whether the evidence warrants a greater allowance for rebates received as display payments from cigarette manufacturers.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Parrish and Mr. Chiang voting yes, Ms. Mandel abstaining, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be returned to the district for a reaudit.

Alden Design, Inc., SR FH 25-801057; 89000565130

1-1-91 to 12-31-93, \$16,688.19 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Dennis L. Clinkenbeard, SX EH 23-704465; 89000405310

10-1-91 to 6-30-94, \$00.00 Tax

SX EH 23-704465; 89000405320

10-1-92 to 12-31-94, \$00.00 Tax, \$00.00 Penalty, Negligence

For Petitioner: Joseph A. Vinatieri, Attorney  
Dennis Clinkenbeard

For Sales and Use Tax Department: Robert Tucker, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether credits for taxes overpaid for the period January 1, 1992, through September 30, should be applied to a determination that was issued for a subsequent audit period.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs voting yes, Ms. Mandel not participating, Mr. Andal absent, the Board ordered that it would support a Board of Control Claim by petitioner for payment of the credits barred by the statute of limitations.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Jaime A. Odar, SR AA 13-878766; 89000098020

10-1-93 to 12-31-95, \$00.00 Tax, \$9,535.65 Penalty, Fraud

For Petitioner: Hernan Mesquera, Accountant  
Mr. Jamie Odar

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether relief from the penalty for fraud or intent to evade the tax is warranted.

Action: Mr. Klehs moved the petition be redetermine. The motion failed for lack of a second.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

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**FINAL ACTION OF FRANCHISE AND INCOME TAX APPEAL**

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Kaufman & Broad Home Corporation, 37312*, be granted.

**BUSINESS TAXES HEARINGS**

Mario Odar, SX AS 99-116275; 8900210800

10-1-93 to 12-31-95, \$00.00 Tax, \$6,352.37 Penalty, Fraud

For Petitioner:

Miguel Ramos, CPA

Mario Odar

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether imposition of the 25 percent penalty for fraud is appropriate.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Casmalia Disposal, HF HQ 38-000151, 89000924710

7-1-90 to 6-30-91, \$421,200.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Janet Vining, Counsel

Action: The Board took no action.

Jurek Mariusz Pilek and Samantha Kate Beard-Pilek, SR EAA 97-248005; 17830

1-1-92 to 9-30-98, \$49,180.80 Tax, \$00.00 Penalty, Failure to File

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Action: The Board took no action.

Naief H. Khalil, SR EA 99-472353; 89002271130

1-1-94 to 6-30-96, \$82,687.42 Tax, \$20,671.89 Penalty, Fraud

Nation Wide Liquidators, Inc., SR EA 97-174130; 89002070540

7-1-96 to 3-31-97, \$59,345.72 Tax, \$14,836.44 Penalty, Fraud



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For Petitioner: No Appearance  
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative  
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.  
Issues: Whether the evidence shows that the audit method used to establish total sales is erroneous.  
Whether the documentation received from Super Sales of America, Inc. is exaggerated.  
Whether the evidence shows that the audited measure of tax is excessive.  
Whether the evidence shows that petitioners' alternative audit approach would result in a more accurate determination of taxable sales.  
Whether relief from the fraud penalties is warranted.  
Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**FINAL ACTION ON PETITIONS HEARD OCTOBER 3, 2001**

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Valentin Gomez Jimenez*, SX AP 99-272364; 89002177520, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Jaime A. Odar*, SR AA 13-878766; 89000098020, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Mario Odar*, SX AS 99-116275; 8900210800, be redetermined as recommended by the Appeals Section.

The Board adjourned at 4:15 p.m.

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*The foregoing minutes are adopted by the Board on November 29, 2001.*